

**REMARKS**

Applicant thanks the Examiner for acknowledging that claims 4, 13 and 19 contain allowable subject matter. Applicant respectfully requests reconsideration of the present application in view of the reasons that follow. Claims 1-25 are now pending in this application.

**Claim Rejections under 35 U.S.C. § 102**

Claims 1, 7, 9, 10, 16, 22 and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,247,464 (“Curtis”). In response, Applicant traverses the rejection for the reasons set forth below.

Applicant relies on M.P.E.P. § 2131, entitled “Anticipation – Application of 35 U.S.C. § 102(a), (b) and (e)” which states, “a claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

Applicant respectfully submits that Curtis does not describe each and every element of the claims.

Independent claim 1 is directed to a “speed calculation system” comprising in addition to other elements “said transmission node includes: a grouping means for grouping at least two of received packets; and a transmission means for affixing probe information for uniquely identifying said grouped packet group to each packet of the packet group, and consecutively transmitting the packets, belonging to an identical packet group; and said reception node includes: a receiving means for receiving said transmitted packet; a recording means for recording an arrival time of said received packet; a determining means for determining whether the probe information is included in said received packet; and a calculating means for calculating a communication speed based upon a difference between the arrival times of the packets, belonging to an identical packet group as identified by the probe information, among the packets determined to have said probe information included.” (emphasis added). Independent claims 7, 9, 10, 16, 22, 24 recite similar limitations.

For the aid of the Examiner in understanding the claimed speed calculation system, applicant refers the Examiner to a non-limiting exemplary embodiment described in the specification as filed with respect to Figs. 2-3.

A transmission node includes a transfer controller. The transfer controller 301 groups at least two data packets and transfers the data packets to the transmitter 303 group by group when a plurality of the data packets are filed in the queue 302. The probe information that is inserted into each data packet is information for uniquely identifying the group to which each data packet belongs. The reception node includes a receiver 501. The packet identifying section 502 determines whether the data packet transferred from the receiver 501 is a data packet including the probe information. When the packet identifying section 502 determines that it is a data packet including the probe information, the receiver identifies the reception completion times of the data packets, belonging to an identical packet group and derives the speed of the communication path.

In contrast, Curtis does not disclose, teach or suggest each and every element recited in independent claims 1, 7, 9, 10, 16, 22 and 24.

Curtis is directed to a system for determining the physical location of nodes on a network. *See Abstract*. Curtis discloses the use of two stations to determine the arrival times at the station of a packet transmitted over the network from a first node to a second node and of a reply packet sent by the second node to the first node. *See id.*

Curtis discloses a first node that records the arrival time of a first packet and the arrival time of a second packet. *See Col. 1, lines 52-60*. However, Curtis does not disclose “grouping at least two of received packets” as claimed in claim 1.

In addition, Curtis discloses that a source address 56 (which contains the address of the node that sent the packet) is extracted from the packets. *See Col. 6, lines 30-33*. However, a source address identifying the node that sent the packet is not the same as “probe information for uniquely identifying said grouped packet group to each packet of the packet group” as claimed in claim 1. Moreover, Curtis fails to disclose, teach or suggest “determining whether the probe information is included in said received packet.”

Curtis further discloses that the arrival times of the packets are used to compute a distance between the first node and second node. *See* Col. 1, lines 65-68. However, computing the distance between two nodes is not the same as “calculating a communication speed based upon a difference between the arrival times of the packets” as claimed in claim 1.

M.P.E.P. § 2131 states that “[t]he identical invention must be shown in as complete detail as is contained in the...claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *See In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Here, Curtis fails to disclose each and every limitation in as complete detail as is contained in independent claims 1, 7, 9, 10, 16, 22 and 24.

Accordingly, Applicant respectfully requests that the rejection be withdrawn and independent claims 1, 7, 9, 10, 16, 22 and 24 be allowed. Further, claims 2-6, 8, 11-15, 17-21 and 23 depend from one of claims 1, 7, 9, 10, 16, 22 or 24 and should be allowed for the reasons set forth above without regard to further patentable limitations contained therein.

If this rejection of the claims is maintained, the examiner is respectfully requested to point out where the above-mentioned features are disclosed in Curtis.

#### **Claim Rejections under 35 U.S.C. § 103**

Claims 2, 3, 8, 11, 12, 17, 18 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Curtis in view of U.S. Patent Publication No. 2004/0203827 (“Heiner”). Claims 5, 6, 14, 15, 20, 21 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Curtis in view of U.S. Patent Publication No. 2003/0154301 (“McEachern”).

As set forth above, Curtis fails to disclose, teach or suggest each and every limitation of independent claims 1, 7, 9, 10, 16, 22 and 24. Claims 2-6, 8, 11-15, 17-21 and 23 depend from one of independent claims 1, 7, 9, 10, 16, 22 or 24 and should be allowed for the reasons set forth above without regard to further patentable limitations contained therein. Further, Heiner and McEachern fail to cure the deficiencies of Curtis. Accordingly, Applicant requests that the rejection be withdrawn.

Concerning independent claim 25, Applicants traverse the rejection for the reasons set forth below.

Independent claim 25 is directed to a “calculation method” comprising the steps of “generating and transmitting a dummy packet for calculating a speed to calculate a speed of a packet from a difference between arrival times of the dummy packets,” characterized in employing the received packet as a packet for calculating the speed instead of generating said dummy packet.”

First, as set forth above, Curtis computes the distance between two nodes, which is not the same as “calculating a speed” of communication based on “difference between arrival times of the dummy packets.” Further, the Office Action acknowledges that Curtis fails to disclose generating dummy packets as claimed in claim 25. *See* Office Action at p. 3. To cure the deficiencies of Curtis, the Office Action relies on McEachern. This contention is respectfully traversed.

McEachern discloses the generation of an idle packet when a last packet in a transmission is lost. *See* ¶ [0069]. Once a client receives an idle packet, it requests that a server retransmit the last packet that was lost. *See id.* However, generating an idle packet to identify when a packet transmission is lost is not the same as “generating and transmitting a dummy packet for calculating a speed to calculate a speed of a packet from a difference between arrival times of the dummy packets” as claimed in claim 25.

When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Here, the cited references fail to disclose each and every limitation in as complete detail as is contained in independent claim 25.

Accordingly, the combination of Curtis and McEachern fail to disclose each and every limitation as claimed in independent claim 25

If this rejection of the claims is maintained, the examiner is respectfully requested to point out where the above-mentioned features are disclosed in the cited references.

**Conclusion**


Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 8/17/2010

By 

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 945-6014  
Facsimile: (202) 672-5399

George C. Beck  
Attorney for Applicant  
Registration No. 38,072

W. Keith Robinson  
Attorney for Applicant  
Registration No. 59,396